

DANIEL MALAKAUSKAS, *Cal. Bar. No.: 265903*
MALAKAUSKAS LAW, APC
7345 South Durango Drive
Suite B-107-240
Las Vegas, NV 89113
Tel: 866-790-2242 / Fax: 888-802-2440
daniel@malakauskas.com

Attorney for Plaintiff: Stephen Hopson

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

STEPHEN HOPSON.

Case No.:

Plaintiff,

V

**FIVE STAR BURGER LLC, and DOES 1-10,
Inclusive.**

Defendants.

**COMPLAINT BY FRANK HOPSON
AGAINST FIVE STAR BURGER LLC, *et al.*,
FOR DAMAGES AND INJUNCTIVE RELIEF
RESULTING FROM VIOLATIONS OF 1)
TITLE III OF THE AMERICANS WITH
DISABILITIES ACT OF 1990; 2) THE UNRUH
CIVIL RIGHTS ACT; and 3) THE
CALIFORNIA DISABLED PERSONS ACT.**

[42 U.S.C. §§ 12101-12213; Cal. Civ. Code §§ 51, 52, 54, 54.1, 54.2 and 54.3.]

Comes now the Plaintiff, FRANK HOPSON, (hereafter, "Mr. Hopson" or "Plaintiff") through his Attorney, DANIEL MALAKAUSKAS, 7345 South Durango Drive, Suite B-107-240, Las Vegas, NV 89113; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied his civil rights, hereby respectfully alleges, avers, and complains as follows:

THIS COURT CAN GRANT JUSTICE TO A DISABLED INDIVIDUAL.

1. Mr. Hopson has cardiovascular disease and diabetes. Mr. Hopson's cardiovascular disease makes physical activity, such as walking, more difficult. As such, the state of California issued Mr. Hopson a parking placard allowing him to park in disabled parking stalls. Mr. Hopson is therefore a "person with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.

2. Five times in May and June 2023, Mr. Hopson was denied the full and equal access to a public accommodation located at 230 South Cherokee Lane, Lodi, CA 95240.

3. Mr. Hopson now asks that this Court stand up for his rights under the Americans with Disabilities Act (“ADA”), the Unruh Civil Rights Act (“UCRA”) and the California Disabled Persons Act (“CDPA”).

**THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA,
SACRAMENTO DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR
PLAINTIFF TO SEEK JUSTICE**

4. The United States District Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1333(a)(3) and (a)(4), for violations of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.* This Court has supplemental jurisdiction over all state claims, including, but not limited to, claims under the Unruh Civil Rights Act, Cal. Civ. Code § 51, *et seq.*, and/or the California Disabled Persons Act, Cal. Civ. Code §§ 54-55.3, pursuant to 28 U.S.C. § 1337 as such acts not only expressly incorporate the Americans with Disabilities Act, but such state law claims also arose from the same nucleus of operative facts or transactions.

5. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) as the claims alleged herein arose in the Eastern District, specifically at the real property located at 230 South Cherokee Lane, Lodi, CA 95240.

6. The Sacramento Division of the Eastern District of California, is the proper division because all claims herein arose at the real property located at 230 South Cherokee Lane, Lodi, CA 95240.

THE VICTIM AND THOSE RESPONSIBLE

7. Mr. Hopson has cardiovascular disease and diabetes. Mr. Hopson's cardiovascular disease makes physical activity, such as walking, more difficult. As such, the state of California issued Mr. Hopson a parking placard allowing him to park in disabled parking stalls. Mr. Hopson is therefore a "person with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.

8. Defendants, FIVE STAR BURGER LLC, and Does 1-10 (hereafter, collectively or individually, “Tenant”), operate as a business establishment, hold themselves out to the public, and do business as “Five Star Burger” at 230 South Cherokee Lane, Lodi, CA 95240., and have substantial control over the interior and exterior of the building, the parking lot, and all spaces adjacent to such building.

9. The true names and capacities of the Defendants named herein as Does 1-10, inclusive, whether individual, corporate, partnership, association, or otherwise, are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff requests leave of court to amend this complaint to allege their true names and capacities at such times as they are ascertained.

10. Plaintiff is informed and believes and thereon alleges that each of the Defendants, including Does 1-10, caused and are responsible for the below described unlawful conduct and resulting injuries by, among other things, personally participating in the unlawful conduct or acting jointly or conspiring with others who did so; by authorizing, acquiescing in or setting in motion policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent the

unlawful conduct; by failing and refusing with deliberate indifference to Plaintiff's rights to equal access to public spaces; and by ratifying the unlawful conduct that occurred by agents, and officers or entities under their direction and control.

MR. HOPSON WAS DENIED EQUAL ACCESS TO A PUBLIC ACCOMMODATION AND NOW FIGHTS FOR ALL DISABLED

11. Mr. Hopson has cardiovascular disease and diabetes. Mr. Hopson's cardiovascular disease makes physical activity, such as walking, more difficult. As such, the state of California issued Mr. Hopson a parking placard allowing him to park in disabled parking stalls. Mr. Hopson is therefore a "person with a disability" and a "disabled person" and has a "disability" or "medical condition" pursuant to federal law, rules and regulations, specifically 42 U.S.C § 12102, and 28 C.F.R. § 36.104.

12. Five times in May and June 2023, Mr. Hopson desired to go to and use the services, and/or buy products at the “Five Star Burger” located at 230 South Cherokee Lane, Lodi, CA 95240.

13. While in the parking lot adjacent to, surrounding, or while inside the business "Five Star Burger," Mr. Hopson personally encountered barriers that interfered with his ability, to use and enjoy the goods, services, privileges and accommodations offered by the facility.

14. Specifically, and personally, Mr. Hopson experienced difficulty while going to the business known as “Five Star Burger.” Mr. Hopson had eaten at “Five Star Burger” in the past and desired to eat there again. However, recently, every time Mr. Hopson attempted to go to “Five Star Burger”, Mr. Hopson was deterred as employees or managers of “Five Star Burger” illegally parked in the accessible parking space or its access aisle. In fact, the employees or managers of “Five Star Burger” habitually park diagonally across the accessible parking stall and access aisle blocking anyone from accessing the accessible parking stall.

15. Despite Mr. Hopson's wish to patronize the business in the future, as the business is near other businesses Mr. Hopson visits, the above-mentioned barriers constitute deterrents to access to the business, rendering the business' goods, services, facilities, privileges, advantages, and accommodations unavailable to physically disabled patrons such as himself.

16. Mr. Hopson alleges, on information and belief, that Defendants knew that such barriers existed and that Defendants' failure to remove the barriers was intentional as the particular barriers mentioned above were intuitive and obvious. Additionally, Defendants exercised control and dominion over the condition of the real property and building and had the financial resources to remove such barriers. Furthermore, Mr. Hopson alleges, on information and belief, that such modifications were readily achievable as removal of the above barriers could have been achieved without much difficulty or expense.

17. Mr. Hopson brings this lawsuit to encourage Defendants to ensure their property is accessible to all.

**FIRST CLAIM
VIOLATION OF TITLE III OF THE ADA
(As to all Defendants)**

18. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

19. The parking lot and building at the real property known as 230 South Cherokee Lane, Lodi, CA 95240. is owned, controlled, operated, leased, and managed by Defendants: Tenant, Does 1-10, or their agents. The business "Five Star Burger," including its parking lot, is open to the general public and as such is a "public accommodation" under 42 U.S.C. § 12181 and 28 C.F.R. § 36.104.

20. Pursuant to 42 U.S.C. § 12182(a), by owning, leasing, or operating the public accommodation known as “Five Star Burger,” Defendants are prohibited from discriminating against

1 Plaintiff by denying him, on the basis of his disability, the full and equal enjoyment of the goods,
2 services, facilities, privileges, advantages, or accommodations offered by the facility.

3 21. In order to avoid discriminating against a disabled individual pursuant to 28 C.F.R. §
4 36.101 and § 36.102, Defendants must ensure that such public accommodation is designed, constructed,
5 and altered in compliance with the accessibility standards established by 28 C.F.R. § 36.101 *et seq.*,
6 and have proper policies, practices, and procedures to ensure that individuals with disabilities are
7 afforded equal access to the full and equal enjoyment of the goods, services, facilities, privileges,
8 advantages, or accommodations offered by the public accommodation. 42 U.S.C. §§ 12181(9),
9 12182(b)(2)(A)(iv) and (v), 12183(a)(1) and (2).

10 22. Mr. Hopson is a disabled person, confined to a wheelchair, who suffers from the medical
11 condition C-6-7 Tetraplegia. Plaintiff is therefore a “person with a disability” and a “disabled person”
12 and has a “disability” or “medical condition” pursuant to federal law, rules and regulations, specifically
13 42 U.S.C § 12102 and 28 C.F.R. § 36.104. While at the interior, exterior, parking lot, or adjacent
14 spaces, of the business known as “Five Star Burger,” Plaintiff personally encountered a number of
15 barriers that interfered with his ability, to use and enjoy the goods, services, privileges and
16 accommodations offered at the facility.

17 23. Specifically, Defendants failed to ensure that such real property was equally accessible
18 to individuals with disabilities and medical conditions by having the following barriers at the real
19 property:

20 a. On account of the conduct by employees or managers of “Five Star Burger”, there are
21 not enough accessible parking spaces provided in violation of 1991 ADAAG 4.1.2 (5)(a), 2010
22 ADAS 208.1, 2013 CBC 11B-208.1 and 2016 CBC 11B-208.1;

b. The accessible parking stall is not on the shortest accessible route to an accessible entrance relative to other spaces in the same parking facility in violation of 2010 ADAS 208.3.

24. As a direct and proximate cause of Defendants' conduct, Plaintiff, on the basis of his disabilities, was denied the opportunity to participate in or benefit from a good, service, privilege, individuals in violation of 42 U.S.C. § 12181.

25. Plaintiff seeks injunctive relief to prohibit Defendants' acts and omissions as complained of herein which have the effect of wrongfully discriminating against Plaintiff and other members of the public who are physically disabled from full and equal access to these public facilities. Specifically, Plaintiff seeks injunctive relief ensuring that Defendants modify their real property to ensure that disabled persons are not discriminated against in receiving equal access to goods, services, and facilities as other more able-bodied persons.

**SECOND CLAIM
VIOLATIONS OF CALIFORNIA CIVIL CODE § 51
(As to all Defendants)**

26. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

27. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 51(f) and § 52(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

28. On the basis of his disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals which resulted in Plaintiff's difficulty, discomfort, or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation.

THIRD CLAIM
VIOLATIONS OF CALIFORNIA CIVIL CODE § 54
(As to all Defendants)

29. Plaintiff hereby incorporates and realleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

30. Any violation of the ADA 42 U.S.C. §§ 12101-12213 also constitutes a violation of Cal. Civ. Code § 54.1(d) and § 54.3(a), thus independently justifying an award of damages and injunctive relief pursuant to California law.

31. On the basis of his disabilities, Plaintiff was denied the opportunity to participate in or benefit from a good, service, privilege, advantage or accommodation in a manner equal to that afforded to other non-disabled individuals, which resulted in Plaintiff's difficulty, discomfort or embarrassment. Therefore, pursuant to Cal. Civ. Code § 55.56(a) through (c), Plaintiff is entitled to attorneys' fees, costs, and damages on no less than one-thousand U.S. dollars (1,000 USD) for each and every violation.

PRAYER

WHISEFORE, Plaintiff prays the following:

1. For injunctive relief directing Defendants to modify their facilities and policies as required by law to comply with ADA regulations, including the ADAAG where required; institute policy to enable Plaintiff to use goods and services offered to the non-disabled public; provide adequate access to all citizens, including persons with disabilities; issue a permanent injunction directing Defendants to maintain their facilities usable by Plaintiff and similarly situated person with disabilities in compliance with federal regulations, and which provide full and equal access, as required by law;

2. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible public facilities as complained of herein no longer occur and will not recur;

3. Award Plaintiff all appropriate damages, including, but not limited to, either statutory damages of no less than four-thousand U.S. dollars (4,000 USD) for each and every violation of Cal. Civ. Code § 51, or no less than one-thousand U.S. dollars (1,000 USD) for each and every violation of Cal. Civ. Code § 54, with either Cal. Civ. Code § 51 or § 54 being elected prior to, or at, trial, but not both, and general damages in an amount within the jurisdiction of the Court, according to proof;

4. Award Plaintiff all litigation expenses and costs of this proceeding, and all reasonable attorneys' fees as provided by law, including but not limited to, 42 U.S.C. § 12205, Cal. Civ. Code §§ 52 and 54.3; and

5. Grant such other and further relief as this Court may deem just and proper.

Dated: June 6th, 2023

/s/ Daniel Malakauskas
By: DANIEL MALAKAUSKAS
Attorney for PLAINTIFF
STEPHEN HOPSON